

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

**CARMEN OTERO Mc CULLOCH,**

Plaintiff,

-against-

**07 CV 9780 (LAP) (RLE)**

**TOWN OF MILAN, TOWN OF MILAN TOWN BOARD,  
JOHN V. TALMADGE, Town Supervisor, and ALFRED  
LO BRUTTON, PAULINE COMBE-CLARK, DIANE  
MAY, and ROSS WILLIAMS, Councilpersons, TOWN OF  
MILAN PLANNING BOARD, LAUREN KINGMAN,  
Chairman, and Members JEFFREY ANAGOS, PETER  
GROSS, SHEILA MARGIOTTA, MARY ANN  
HOFFMAN, and PAULINE COMBE-CLARK, GARY  
E. BECK, Zoning Enforcement Officer, Town of Milan, and  
FRANK MARGIOTTA, BARBARA HUGHEY, and  
CHARLOTTE NORMAN,**

Defendants.

-----X

---

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT  
OF MOTION TO DISMISS AMENDED COMPLAINT**

---

Rice & Amon  
Attorneys for Defendants  
Four Executive Boulevard  
Suite 100  
Suffern, New York 10901  
(845) 357-4000

Terry Rice

## **TABLE OF CONTENTS**

### **PRELIMINARY STATEMENT**

#### **POINT I**

<b>PLAINTIFF’S CLAIMS ARE NOT RIPE</b>	<b>1</b>
<b>A. Introduction</b>	<b>1</b>
<b>B. Final Decision Requirement (Prong-One Ripeness)– All Claims</b>	<b>1</b>
<b>C. Prong-Two Ripeness – Taking Claim</b>	<b>3</b>
<b>D. Easement Interpretation</b>	<b>4</b>
<b>E. Conclusion</b>	<b>4</b>

#### **POINT II**

<b>FAIR HOUSING ACT CLAIMS BARRED BY STATUTE OF LIMITATIONS</b>	<b>4</b>
---	----------

#### **POINT III**

<b>CHALLENGE TO SUBDIVISION CONDITIONS BARRED BY STATUTE OF LIMITATIONS</b>	<b>5</b>
---	----------

#### **POINT IV**

<b>THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION PURSUANT TO THE FAIR HOUSING ACT</b>	<b>5</b>
<b>A. Introduction</b>	<b>5</b>
<b>B. “City People” Not Covered by FHA</b>	<b>6</b>
<b>C. The Town Did Not Make a Dwelling Unavailable/Plaintiff Not Aggrieved</b>	<b>6</b>
<b>D. Disparate Treatment</b>	<b>7</b>
<b>E. Disparate Impact</b>	<b>10</b>
<b>i. Introduction</b>	<b>10</b>

ii. No Policy or Practice	11
iii. Statistical Evidence	12
F. Conclusion	14
 <b>POINT V</b>	
<b>PLAINTIFFS LACK A PROPERTY INTEREST</b>	14
A. Introduction	14
B. No Property Interest if Reviewing Agency Possesses Discretion	14
C. No Property Interest in Subdivision Approval or in Unconditional Subdivision Approval	15
 <b>POINT VI</b>	
<b>PLAINTIFF DOES NOT POSSESSES A SUBSTANTIVE DUE PROCESS CLAIM</b>	19
A. Equal Protection and Taking Claims Preclude Substantive Due Process Claim	19
B. The Complaint Fails to State a Substantive Due Process Claim	20
C. Because of the Existence of Available Judicial Review, a Substantive Due Process Claim is Not Stated	22
 <b>POINT VII</b>	
<b>THE COMPLAINT FAILS TO STATE A PROCEDURAL DUE PROCESS CLAIM</b>	23
 <b>POINT VIII</b>	
<b>NO TAKING CLAIM EXISTS AS A MATTER OF LAW</b>	24
A. Plaintiff Not Deprived of All Use of Property	24
B. Conservation Easement – Not Unconstitutional Exaction	26

**POINT IX**

<b>CLAIMS AGAINST INDIVIUDAL DEFENDANTS BARRED BY <i>KNORR-PENNINGTON</i> DOCTRINE</b>	<b>31</b>
--	-----------

**POINT X**

<b>INDIVIDUAL DEFENDANTS ENTITLED TO QUALIFIED IMMUNITY</b>	<b>32</b>
---	-----------

**POINT XI**

<b>FAILURE TO ALLEGE FILING OF PROPER NOTICE OF CLAIM BARS CLAIM PURSUANT TO NEW YORK STATE CONSTITUTION, STATE LAW</b>	<b>33</b>
---	-----------

**POINT XII**

<b>COMPLAINT FAILS TO STATE A CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT/ PROSPECTIVE ECONOMIC ADVANTAGE</b>	<b>34</b>
---	-----------

<b>CONCLUSION</b>	<b>35</b>
-------------------	-----------

## TABLE OF AUTHORITIES

### Federal Decisions

<i>2922 Sherman Ave. Tenants' Ass'n v. District of Columbia</i> , 444 F.3d 673 (C.A.D.C. 2006)	14
<i>Affordable Housing Development Corp. v. City of Fresno</i> , 433 F.3d 1182 (9th Cir. 2006)	33
<i>Agins v. City of Tiburon</i> , 447 U.S. 255 (1980)	29
<i>Albiero v. City of Kankakee</i> , 122 F.3d 417 (7 <sup>th</sup> Cir. 1997)	23
<i>Albright v. Oliver</i> , 510 U.S. 266 (1994)	21
<i>Alpha III, Inc. v. City of San Diego</i> , 187 Fed.Appx. 709 (9th Cir. 2006)	33
<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987)	33
<i>Andrus v. Allard</i> , 444 U.S. 51 (1979)	26
<i>Armendariz v. Penman</i> , 75 F.3d 1311 (9 <sup>th</sup> Cir. 1996)	21
<i>Ayeni v. Mottola</i> , 35 F.3d 680 (2d Cir. 1994), <i>cert. denied</i> , 514 U.S. 1062 (1995)	21
<i>Bangerter v. Orem City Corp.</i> , 46 F.3d 1491 (10 <sup>th</sup> Cir. 1995)	9
<i>Barta v. Board of Regents</i> , 79 F.3d 717 (8 <sup>th</sup> Cir. 1996)	16 n.4
<i>Bell Atlantic Corp. v. Twombly</i> , 127 S. Ct. 1974 (2007)	1
<i>Bello v. Walker</i> , 840 F.2d 1124 (1 <sup>st</sup> Cir.), <i>cert. denied</i> , 488 U.S. 868 (1988)	24
<i>Benitez v. Wolff</i> , 985 F.2d 662 (2d Cir.1993)	34
<i>Benjamin v. Town of Fenton</i> , 892 F.Supp. 64 (N.D.N.Y. 1995)	22
<i>Blain v. Township of Radnor</i> , 2004 WL 1151727 (E.D.Pa. 2004), <i>aff'd</i> , 167 Fed.Appx. 330 (3d Cir. 2006)	30
<i>Board of Regents v. Roth</i> , 408 U.S. 564 (1972)	16 n.4
<i>Boulware v. Nevada Department of Human Resources</i> , 793 F.2d 800 (9 <sup>th</sup> Cir. 1992)	32

<i>Brady v. Town of Colchester</i> , 863 F.2d 205 (2d Cir. 1988)	24, 25
<i>Brandon v. Holt</i> , 469 U.S. 464 (1985)	36
<i>Bryant v. City of New York</i> , 404 F.3d 128 (2d Cir. 2005)	22
<i>Bryant Woods Inn, Inc. v. Howard County</i> , 911 F.Supp.2d 918 (D.My 1996), <i>aff'd</i> , 124 F.3d 597 (4 <sup>th</sup> Cir. 1997)	11 n.2
<i>Buckles v. King County</i> , 191 F.3d 1127 (9 <sup>th</sup> Cir. 1999)	21
<i>Caidor v. M &amp; T Bank</i> , 2006 WL 839547 (N.D.N.Y. 2006)	21
<i>California Motor Transp. Co. v. Trucking Unlimited</i> , 404 U.S. 508 (1972)	32
<i>Catanzaro v. Weiden</i> , 188 F.3d 56 (2d Cir. 1999)	22
<i>Carson Harbor Village, Ltd. v. City of Carson</i> , 37 F.3d 468 (9 <sup>th</sup> Cir. 1994)	3
<i>Cedarwood v. Town of Schodack</i> , 954 F.Supp. 513 (N.D.N.Y. 1997)	17
<i>Citibank, N.A. v. Itochu Int'l, Inc.</i> , 2003 WL 1797847 (S.D.N.Y. 2003)	1
<i>Chiplin Enterprises v. City of Lebanon</i> , 712 F.2d 1524 (1 <sup>st</sup> Cir. 1983)	23
<i>City of Monterey v. Del Monte Dunes at Monterey</i> , 526 U.S. 687 (1999)	28
<i>City of Newport v. Fact Concerts, Inc.</i> , 453 U.S. 247 (1981)	36
<i>Conley v. Gibson</i> , 355 U.S. 41 (1957)	1
<i>Country View Estates @ Ridge LLC v. Town of Brookhaven</i> , 452 F.Supp.2d 142 (E.D.N.Y. 2006)	3
<i>County of Sacramento v. Lewis</i> , 523 U.S. 833 (1998)	21, 22
<i>County of Suffolk v. Long Island Lighting Co.</i> , 710 F.Supp. 1387 (E.D.N.Y. 1989), <i>aff'd</i> , 907 F.2d 1295 (2d Cir. 1990)	32
<i>Creative Environment, Inc. v. Estabrook</i> , 680 F.2d 822 (1 <sup>st</sup> Cir.), <i>cert. denied</i> , 459 U.S. 989 (1982)	24
<i>Crowley v. Courville</i> , 76 F.3d 47 (2d Cir. 1996)	16, 27

<i>Davis v. Scherer</i> , 468 U.S. 183 (1984)	34
<i>DeBlasio v. Zoning Board of Adjustment of the Town of West Armwell</i> , 53 F.3d 593 (3d Cir.), <i>cert .denied</i> , 516 U.S. 937 (1995)	24
<i>Deepwells Estates, Inc. v. Village of Head of the Harbor</i> , 973 F.Supp. 338 (E.D.N.Y. 1997), <i>appeal dismissed</i> , 162 F.3d 1147 (2d Cir. 1998)	17
<i>DLC Management Corp. v. Town of Hyde Park</i> , 163 F.3d 124 (2d Cir. 1998)	16
<i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994)	27, 28
<i>Dougherty v. Town of New Hempstead Board of Zoning Appeals</i> , 282 F.3d 83 (2d Cir. 2002)	3
<i>Eastampton Center, L.L.C. v. Township of Eastampton</i> , 155 F.Supp.2d 102 (D.N.J. 2001)	8
<i>Edwards v. Media Borough Council</i> , 430 F.Supp.2d 445 (E.D. Pa. 2006)	13
<i>Eichenlaub v. Township of Indiana</i> , 385 F.3d 285 (3d Cir. 2004)	23 n.6
<i>Euclid v. Ambler Realty Co.</i> , 272 U.S. 365 (1926)	26
<i>Fischer Sand &amp; Aggregate Co. v. City of Lakeville</i> , 874 F.2d 957 (D. Minn. 1994)	32
<i>First English Evangelical Lutheran Church v. County of Los Angeles</i> , 427 U.S. 304 (1987)	25
<i>Frooks v. Town of Cortland</i> , 997 F.Supp. 438 (S.D.N.Y. 1998), <i>aff'd</i> , 182 F.3d 899 (2d Cir. 1999)	4, 22
<i>Gagliardi v. Village of Pawling</i> , 18 F.3d 188 (2d Cir. 1994)	16, 25 n.7
<i>Gamble v. City of Escondido</i> , 104 F.3d 300 (9 <sup>th</sup> Cir. 1997)	12
<i>Garcia v. Spun Steak Co.</i> , 998 F.2d 1480, <i>rehearing denied</i> , 13 F.3d 296 (9 <sup>th</sup> Cir. 1993)	12, 14
<i>Gibbons v. Fronton</i> , __ F.Supp.2d ___, 2008 WL 355514 (S.D.N.Y. 2008)	1
<i>Goldbaltt v. Town of Hempstead</i> , 369 U.S. 590 (1962)	26
<i>Goldstein v. Pataki</i> , __ F.3d ___, 2008 WL 269100 (2d Cir. 2008)	1

<i>Gottlieb v. Village of Irvington</i> , 69 F.Supp.2d 553 (S.D.N.Y. 1999)	3 n.1, 24
<i>Graham v. Connor</i> , 490 U.S. 386 (1989)	21
<i>Greiner v. County of Greene</i> , 811 F.Supp. 796 (N.D.N.Y.1993)	37
<i>Hadacheck v. Sebastian</i> , 239 U.S. 394 (1915)	26
<i>Hallmark Developers, Inc. v. Fulton County</i> , 466 F.3d 1276 (11 <sup>th</sup> Cir. 2006)	11
<i>Hamilton v. Svatik</i> , 779 F.2d 383 (7 <sup>th</sup> Cir.1985)	9
<i>Hampton Bays Connections, Inc. v. Duffy</i> , 127 F.Supp.2d 364 (E.D.N.Y. 2001)	25
<i>Harlen Associates v. Village of Mineola</i> , 273 F.3d 494, 501 (2d Cir 2001)	11 n.2, 16
<i>Hellenic American Neighborhood Action Comm. v. City of New York</i> , 101 F.3d 877 (2d Cir. 1996), <i>cert. dismissed</i> , 521 U.S. 1140 (1997)	24
<i>Hemisphere Bldg. Co., Inc. v. Village of Richton Park</i> , 171 F.3d 437 (7 <sup>th</sup> Cir. 1999)	13
<i>Hi Pockets, Inc. v. The Music Conservatory of White Plains</i> , 192 F.Supp.2d 143 (S.D.N.Y. 2002)	24
<i>Hallmark Developers, Inc. v. Fulton County</i> , 466 F.3d 1276 (11 <sup>th</sup> Cir. 2006)	11, 14, 15
<i>Hoeck v. City of Portland</i> , 57 F.3d 781 (9 <sup>th</sup> Cir. 1995), <i>cert. denied</i> , 516 U.S. 1112 (1996)	22 n.5
<i>Honess 52 Corp. v. Town of Fishkill</i> , 1 F.Supp.2d 294 (S.D.N.Y. 1998)	18
<i>Huntington Branch, N.A.A.C.P. v. Town of Huntington</i> , 844 F.2d 926 (2d Cir. 1988), <i>aff'd in part</i> , 488 U.S. 15 (1988), <i>rehearing denied</i> , 488 U.S. 1023 (1989)	14, 15
<i>Iqbal v. Hasty</i> , 490 F.3d 143 (2d Cir. 2007)	1
<i>Jones v. McMahon</i> , 2005 WL 928667 (N.D.N.Y. 2005), <i>aff'd, in part</i> , <i>dismissed in part</i> , 465 F.3d 46, 2006 WL 2828506 (2006)	21
<i>Kaluczky v. City of White Plains</i> , 57 F.3d 202 (2d Cir. 1995)	21, 22
<i>Keystone Bituminous Coal Ass'n v. DeBenedictis</i> , 480 U.S. 470 (1987)	26
<i>LeBlanc-Sternberg v. Fletcher</i> , 67 F.3d 412 (2d Cir. 1995)	7, 8, 11



<i>Licari v. Ferruzzi</i> , 22 F.3d 344 (1 <sup>st</sup> Cir. 1994)	22
<i>Lingle v. Chevron USA Inc.</i> , 544 U.S. 528 (2005)	27
<i>Lorence v. Achtyl</i> , 20 F.3d 529 (2d Cir. 1994)	22
<i>Lucas v. South Carolina Coastal Council</i> , 505 U.S. 1003 (1992)	26
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973)	8
<i>Macone v. Town of Wakefield</i> , 277 F.3d 1 (1 <sup>st</sup> Cir. 2002)	15
<i>Manistee Town Center v. City of Glendale</i> , 227 F.3d 1090 (9 <sup>th</sup> Cir. 2000)	32, 33
<i>Maple Properties, Inc. v. Township of Upper Providence</i> , 151 Fed.Appx. 174 (3d Cir. 2005)	23 n.6
<i>Marathon Outdoor, LLC v. Vesconti</i> , 107 F.Supp.2d 355 (S.D.N.Y. 2000)	3
<i>Marino v. Ameruso</i> , 837 F.2d 45 (2d. Cir.1988)	25
<i>Marriott Senior Living Services, Inc. v. Springfield Township</i> , 78 F.Supp.2d 376 (E.D.Pa. 1999)	3
<i>Martin v. N.Y. State Dep't of Mental Hygiene</i> , 588 F.2d 371 (2d Cir. 1978)	10
<i>Midnight Sessions, Ltd. v. City of Philadelphia</i> , 945 F.2d 667 (3d Cir. 1991), <i>cert. denied</i> , 503 U.S. 984 (1992)	11 n.2, 24
<i>Mikels Motors, Inc. v. Township of Stroud</i> , 48 Fed.Appx. 844 (3d Cir. 2002)	11 n.2
<i>Miracle Mile Associates v. City of Rochester</i> , 617 F.2d 18 (2d Cir. 1980)	32
<i>Missouri v. National Organization for Woman</i> , 620 F.2d 1301 (8 <sup>th</sup> Cir.), <i>cert. denied</i> , 449 U.S. 842 (1980)	33
<i>MKA Realty Corp. v. Town of Wallkill</i> , 82 Fed.Appx. 712 (2d Cir. 2003)	16
<i>Mountain Side Mobile Estate Partnership v. Secretary of Housing and Urban Development</i> , 56 F.3d 1243 (10 <sup>th</sup> Cir. 1995)	12, 14
<i>Murphy v. New Milford Zoning Commission</i> , 402 F.3d 342 (2d Cir. 2005)	3, 4
<i>Natale v. Town of Ridgefield</i> , 170 F.3d 258 (2d Cir. 1999)	16, 24, 34
<i>Nollan v. California Coastal Commission</i> , 483 U.S. 825 (1987)	27

<i>Norton v. Village of Corrales</i> , 103 F.3d 928 (10 <sup>th</sup> Cir. 1996)	23
<i>Orange Lake Associates v. Kirkpatrick</i> , 21 F.3d 1214 (2d Cir. 1994)	17, 25
<i>Palazzolo v. Rhode Island</i> , 533 U.S. 606 (2001)	27
<i>Palmieri v. Town of Babylon</i> , 2006 WL 1155162 (E.D.N.Y. 2006)	8, 12
<i>Penn Central Transportation Co. v. City of New York</i> , 438 U.S. 104 (1978)	26, 29
<i>PFZ Properties v. Rodrigues</i> , 928 F.2d 28 (1 <sup>st</sup> Cir. 1991), <i>cert. dismissed</i> , 503 U.S. 257 (1992)	23
<i>R-Goshen LLC v. Village of Goshen</i> , 289 F.Supp.2d 441 (S.D.N.Y. 2003), <i>aff'd</i> , 115 Fed.Appx. 465 (2d Cir. 2004)	7
<i>Regional Economic Community Action Program, Inc. v. City of Middletown</i> , 294 F.3d 35, 49 (2d Cir.), <i>cert. denied</i> , 537 U.S. 813 (2002)	8, 11, 12, 13
<i>Reinhart v. Lincoln County</i> , 482 F.3d 1225 (10 <sup>th</sup> Cir. 2007)	9, 12, 13
<i>Robinson v. Limerick Township</i> , 2005 WL 627880 (E.D.Pa. 2005)	23 n.6
<i>Ruotolo v. City of New York</i> , __ F.3d __, 2008 WL 313795 (2d Cir. 2008)	1
<i>RRI Realty Corp. v. Village of Southampton</i> , 870 F.2d 911 (2d Cir.), <i>cert. denied</i> , 493 U.S. 893 (1989)	16, 17 n.3
<i>Sag Harbor Port Assocs. v. Village of Sag Harbor</i> , 21 F.Supp.2d 179 (E.D.N.Y. 1998), <i>aff'd</i> , 182 F.3d 901 (2d Cir 1999)	4
<i>Sanghvi v. City of Claremont</i> , 328 F.3d 532 (9 <sup>th</sup> Cir.), <i>cert. denied</i> , 540 U.S. 1075 (2003), <i>rehearing denied</i> , 540 U.S. 1170 (2004)	33
<i>Simms v. First Gibraltar Bank</i> , 83 F.3d 1546 (5 <sup>th</sup> Cir. 1996), <i>cert. denied</i> , 519 U.S. 1041 (1996)	12, 13
<i>Smith v. City of Albany</i> , 2006 WL 839525 (N.D.N.Y. 2006), <i>aff'd</i> , 2007 WL 2973995 (2d Cir. 2007)	21
<i>Smith v. United Federation of Teachers</i> , 162 F.3d 1148 (2d Cir.), <i>cert. denied</i> , 525 U.S. 883 (1998)	10
<i>Smith &amp; Lee Associates, Inc. v. City of Taylor</i> , 102 F.3d 781 (6 <sup>th</sup> Cir. 1996)	8

<i>Southend Neighborhood Imp. Ass'n v. St. Clair County</i> , 743 F.2d 1207 (7 <sup>th</sup> Cir. 1984)	12
<i>Southview Associates v. Bongartz</i> , 980 F.2d 84 (2d Cir. 1992), <i>cert. denied</i> , 507 U.S. 987 (1993)	3, 22
<i>Spradlin v. Borough of Danville</i> , 2005 WL 3320788 (M.D.Pa. 2005), <i>aff'd</i> , 188 Fed.Appx. 149 (3d Dept. 2006)	23 n.6
<i>Spaulding v. University of Washington</i> , 740 F.2d 686 (9th Cir.), <i>cert. denied</i> , 469 U.S. 1036 (1984)	12
<i>Sylvia Development Corp. v. Calvert County</i> , 48 F.3d 810 (4 <sup>th</sup> Cir. 1995)	21- 22, 23
<i>Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency</i> , 535 U.S. 302 (2002)	26
<i>Tara Circle, Inc. v. Bifano</i> , 1997 WL 399 683 (S.D.N.Y. 1997)	25
<i>Triomphe Investors v. City of Northwood</i> , 49 F.3d 198 (6 <sup>th</sup> Cir.), <i>cert. denied</i> , 516 U.S. 816 (1995)	22
<i>T.S. Haulers v. Town of Riverhead</i> , 190 F.Supp. 455 (E.D.N.Y. 2002)	25
<i>Tsombanidis v. West Haven Fire Dept.</i> , 352 F.3d 565 (2d Cir. 2003)	9
<i>Tsombanidis v. City of West Haven</i> , 129 F.Supp.2d 136 (D.Conn. 2001)	3
<i>Tufano v. One Toms Point Lane Corp.</i> , 64 F.Supp.2d 119 (E.D.N.Y. 1999), <i>aff'd</i> , 229 F.3d 1136 (2d Cir. 2000)	9, 10
<i>Velez v. Levy</i> , 401 F.3d 75 (2d Cir. 2005)	21, 22
<i>Ventura Village, Inc. v. City of Minneapolis</i> , 318 F.Supp.2d 822 (D. Minn. 2004), <i>aff'd</i> , 419 F.3d 725 (8 <sup>th</sup> Cir. 2005)	13
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i> , 429 U.S. 252 (1977)	8
<i>Village Ponder v. Town of Darien</i> , 56 F.3d 375 (2d Cir. 1995), <i>cert. denied</i> , 117 S.Ct. 50 (1996)	16
<i>Westrum Land Development Corp. v. Whitpain Township</i> , 2002 WL 32351106 (E.D.Pa. 2002)	30

<i>Williamson County Regional Planning Commission v. Hamilton Bank</i> , 473 U.S. 172 (1985)	2, 3, 4
<i>Woodfield Equities, LLC v. Village of Patchogue</i> , 357 F.Supp.2d 622 (E.D.N.Y.), <i>aff'd</i> , 156 Fed.Appx. 389 (2d Cir. 2005)	3
<i>Yale Auto Parts v. Johnson</i> , 758 F.2d 54 (2d Cir. 1985)	24
<i>Yusuf v. Vassar College</i> , 35 F.3d 709 (2d Cir. 1994)	10
<i>Zahra v. Town of Southold</i> , 48 F.3d 674 (2d Cir. 1995)	16, 23 , 25 n.7
<i>Zeigler v. Town of Kent</i> , 258 F.Supp.2d 49 (D.Conn. 2003)	20
<u>Federal Statutes</u>	
42 U.S.C. § 3604(a)	7
42 U.S.C. § 3613(a)(1)(A)	5, 7
<u>State Court Decisions</u>	
<i>Alaxanian v. City of Troy</i> , 69 A.D.2d 937, 415 N.Y.S.2d 293 (3d Dept. 1979)	35
<i>Bidnick v. Johnson</i> , 253 A.D.2d 779, 677 N.Y.S.2d 614 (2d Dept. 1998)	35
<i>Bower Associates v. Town of Pleasant Valley</i> , 2 N.Y.3d 617, 781 N.Y.S.2d 240, 814 N.E.2d 410 (2004)	16, 17
<i>Caprer v. Nussbaum</i> , 36 A.D.3d 176, 825 N.Y.S.2d 55 (2d Dept. 2006)	36
<i>De St. Aubin v. Flacke</i> , 68 N.Y.2d 66, 505 N.Y.S.2d 859, 496 N.E.2d 879 (1986)	26
<i>Fawn Builders v. Planning Bd. of Lewisboro</i> , 223 A.D.2d 996, 636 N.Y.S.2d 873 (3d Dept. 1996)	17
<i>Gazza v. New York State Department of Environmental Conservation</i> , 89 N.Y.2d 603, 657 N.Y.S.2d 555, 679 N.E.2d 1035, <i>cert. denied</i> , 522 U.S. 813 (1997)	26
<i>Greifenberger v. Pav</i> , 225 A.D.2d 731, 640 N.Y.S.2d 197 (2d Dept. 1996), <i>lv. dismissed in part, denied in part</i> , 89 N.Y.2d 963, 655 N.Y.S.2d 883, 678 N.E.2d 495 (1997)	35

<i>Guard-Life Corp. v. Parker Hardware Mfg. Corp.</i> , 50 N.Y.2d 183, 428 N.Y.S.2d 628, 406 N.E.2d 445 (1980)	36
<i>Home Town Muffler Inc. v. Cole Muffler Inc.</i> , 202 A.D.2d 764, 608 N.Y.S.2d 735 (3d Dept. 1994)	36
<i>Innovative Technology Group Corp. v. Planning Bd. of Town of Woodbury</i> , 20 A.D.3d 531, 799 N.Y.S.2d 544 (2d Dept. 2005)	6
<i>Klein v. City of Yonkers</i> , 73 A.D.2d 931, 423 N.Y.S.2d 685 (2d Dept. 1980), <i>aff'd</i> , 53 N.Y.2d 1011, 442 N.Y.S.2d 477, 425 N.E.2d 865 (1981)	35
<i>Korbel v. Zoning Board of Appeals of the Town of Horicon</i> , 28 A.D.3d 888, 814 N.Y.S.2d 301 (3d Dept. 2006)	4
<i>Landing Estates v. Jones</i> , 67 Misc.2d 354, 324 N.Y.S.2d 255 (Sup. Ct. Suffolk Co. 1971)	18
<i>Long Island Pine Barrens Soc., Inc. v. Planning Board of the Town of Brookhaven</i> , 78 N.Y.2d 608, 578 N.Y.S.2d 466, 585 N.E.2d 778 (1991)	6
<i>Mackall v. White</i> , 85 A.D.2d 696, 445 N.Y.S.2d 486 (2d Dept. 1981), <i>lv. denied</i> , 56 N.Y.2d 503, 435 N.E.2d 1100, 450 N.Y.S.2d 1025 (1982)	19
<i>McGowan v. Cohalan</i> , 41 N.Y.2d 434, 393 N.Y.S.2d 376, 361 N.E.2d 1025 (1978)	26
<i>Miller v. Price</i> , 267 A.D.2d 363, 700 N.Y.S.2d 209 (2d Dept. 1999)	4
<i>M &amp; M Partnership v. Sweenor</i> , 210 A.D.2d 575, 619 N.Y.S.2d 802 (3d Dept. 1994)	17
<i>Northern Westchester Professional Park Assocs. v. Town of Bedford</i> , 60 N.Y.2d 492, 470 N.Y.S.2d 350, 458 N.E.2d 809 (1983)	26
<i>Ozols v. Henley</i> , 81 A.D.2d 670, 438 N.Y.S.2d 349 (2d Dept.), <i>appeal dismissed</i> , 54 N.Y.2d 1023, 446 N.Y.S.2d 263, 430 N.E.2d 1316 (1981)	18
<i>Pearson Kent Corp. v. Bear</i> , 28 N.Y.2d 396, 322 N.Y.S.2d 235, 271 N.E.2d 218 (1971)	18
<i>Reed v. Planning Board of the Town of Chester</i> , 120 A.D.2d 510, 501 N.Y.S.2d 710 (2d Dept. 1986)	18
<i>Ross v. Town of Santa Clara</i> , 266 A.D.2d 678, 698 N.Y.S.2d 90 (3d Dept. 1999)	30

*Smith v. Town of Mendon*, 4 N.Y.3d 1, 789 N.Y.S.2d 696,  
822 N.E.2d 1214 (2004) 27, 28-30

*Snyder v. Sony Music Entertainment, Inc.*, 252 A.D.2d 294,  
684 N.Y.S.2d 235 (1<sup>st</sup> Dept. 1999) 36

*Terra Homes v. Smallwood*, 247 A.D.2d 394, 667 N.Y.S.2d 920 (2d Dept.),  
*lv. denied*, 92 N.Y.2d 809, 678 N.Y.S.2d 595, 700 N.E.2d 1231 (1998) 17

*Wulfsohn v. Burden*, 241 N.Y. 288, 302 N.E.2d 120 (1925) 26

#### State Statutes

Town Law § 267-a(5)(b) 3

Town Law § 267-b(1) 4

Town Law § 276 18

Town Law § 277 17, 18, 20

Town Law § 282 6

#### Town of Milan Code

§ 177-2 31

§ 177-13(E) 19

§ 177-21(B) 31

§ 177-33 20

§ 177-34 20

§ 200-6.1(A) 32

§ 200-39(A)(1) 31